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09/895,611	06/29/2001	Barney J. Auman	PAUMAB-CM	6803

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EXAMINER

MACKEY, JAMES P

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 06/01/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/895,611
Filing Date: June 29, 2001
Appellant(s): AUMAN, BARNEY J.

Thompson E. Fehr
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07 March 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is deficient because the description of the means for rotating the shaft about a third axis as set forth on page 9 of the Brief (reproducing the replacement paragraph introduced in the Amendment filed 07 January 2004) is not described in the original disclosure and is new matter; the correct description of the means for rotating the shaft about a third axis, as described in the original disclosure, is set forth on page 6 of the Brief (at the first full paragraph).

(6) *Issues*

The appellant's statement of the issues in the brief (under the heading "Grounds of Rejection to be Reviewed on Appeal") is correct.

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Appellant's brief presents arguments relating to the objection to new matter introduced into the disclosure by the Amendment filed on 07 January 2004. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

(7) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) *Prior Art of Record*

3,683,062	VON DER HEIDE	8-1972
4,764,322	PITAVY et al.	8-1988
3,825,395	PIVAR	7-1974
5,035,601	LIN	7-1991
3,596,324	BAVERS	8-1971
4,695,244	FRIESEN	9-1987
3,347,971	MANKOWICH et al.	10-1967

(9) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

(A) Claims 3, 4, 6 and 7 stand rejected under 35 U.S.C. 102(b) as being anticipated by VON DER HEIDE (U.S. Patent 3,683,062; Figures 1-9; col. 8, lines 50-67, and col. 9, lines 16-32).

VON DER HEIDE teaches a machine which comprises a shaft 64 having a releasable connector 74 attached thereto for connecting a mold 23, 75 to the shaft (col. 7, lines 14-17), a means 24 for rotating the shaft about a first axis (which may be termed a "pitch axis"), a means

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25 for rotating the shaft about a second axis (which may be termed a “roll axis”) which is orthogonal to the first axis, and a means 112 for rotating the shaft about a third axis (which may be termed a “yaw axis”) which is orthogonal to the first and second axes, the shaft extending substantially symmetrically about the point of rotation for the first axis. Note that a recitation with respect to the manner in which a claimed apparatus is intended to be employed (e.g., “for manufacturing a capital for an architectural column”) does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, *Ex parte Masham*, 2 USPQ2d 1647.

(B) Claims 3, 4, 6 and 7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over PITAVY et al. (U.S. Patent 4,764,322; Figures 1, 3 and 4; col. 4, lines 14-23) in view of any one of PIVAR, LIN, BAVERS, FRIESEN, MANKOWICH et al. and VON DER HEIDE.

PITAVY et al. disclose a rotational molding apparatus having means for rotating a mold about three mutually orthogonal axes x, y and z (which may be termed “pitch”, “roll”, and “yaw” axes). While PITAVY et al. do not explicitly disclose that the mold is mounted to a rotated shaft having a releasable connector attached thereto for connecting the mold to the shaft, such a mold support arrangement is conventional in the rotational molding art, as evidenced by any one of PIVAR, LIN, BAVERS, FRIESEN, MANKOWICH et al. and VON DER HEIDE. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify PITAVY et al. by providing a rotated shaft with a releasable connector attached thereto for connecting the mold to the shaft, since such were equivalent means for supporting the mold for rotation.

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(10) *Response to Argument*

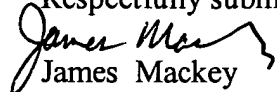
Appellant's arguments on pages 10-12 of the Brief, regarding the objection to the amendment filed 07 January 2004 as containing new matter, relate to subject matter that is not appealable, but rather is petitionable subject matter, and therefore is not appropriate for the Brief.

Appellant argues that neither VAN DER HEIDE nor PITAVY et al. disclose an apparatus wherein each of the three axes of rotation will **always** be orthogonal to one another, since rotation about all of the three axes will sometimes cause one axis to not be orthogonal to another axis. However, such an argument is not commensurate in scope with the claims, which do not require that the three axes of rotation **always** be orthogonal to one another. Moreover, such an argument is not supported by the disclosure as originally filed.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,




James Mackey
Primary Examiner
Art Unit 1722

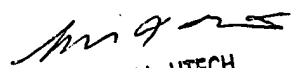
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jpm

May 24, 2005

Conferees


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